IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

NOTICE OF MOTION NO.3623 OF 2005
IN
APPEAL (L) NO.1046 OF 2005
IN
SUMMONS FOR JUDGMENT NO.107 OF 2002
IN
SUMMARY SUIT NO.2833 OF 1998

Shakti Aquaculture Farms Ltd. .. Appellant

v/s.

Mrs.Prabha P. Shenai .. Respondent

Ms.Nipa Singh i/by Mahesh Menon & Co. for the appellant.

Ms.Smita Ghadi for the respondent.

CORAM : R.M.LODHA AND
ANOOP V. MOHTA, JJ.

DATED : 13th January, 2006

P.C.

Aggrieved by the judgment and order dated 2nd December, 2002 passed by the learned Single Judge in Summons for Judgement, the present applicant filed an appeal. Since the appeal suffers from delay of 1063 days, the present notice of motion has been taken out for condonation of delay.

2. The cause shown in the affidavit in support of the notice of motion is that the appellant-company became sick company within the meaning of the Sick Industrial Companies Act, 1985 and reference with regard to the appellant-company was lodged in the month of October, 2002. According to the applicant, by virtue of section 22 of the Act of 1985, suit or proceedings could not have been proceeded with against the applicant. However,

upon having come to know of the judgment and order dated 2nd December, 2002, the applicant took out the notice of motion for setting aside the judgment and order dated 2nd December, 2002. The said notice of motion came to be dismissed on 27th June, 2003. The applicant company being sick company was unable to pay the court fee. The Directors of the company borrowed the finds of Rs.38,950/- and then filed the appeal somewhere in the month of October, 2005. The notice of motion is contested by the respondent.

3. Having considered the matter, we find that the appellant-applicant has miserably failed to show the sufficient cause justifying condonation of such a long delay. Even if we condone the delay upto 27th June, 2003 when the notice of motion taken out by the applicant for setting aside the judgment and order dated 2nd December, 2002 came to be dismissed, we find that from 28th June, 2003 until the date of filing of the appeal in the month of October, 2005, there is no sufficient cause. Even if the appellant-company is sick, it is very difficult to believe the version of the company that being sick company, it could not arrange for the court fee for filing the appeal and that the appeal could be filed after such a long delay only when the Directors of the company were in position to manage the funds to the extent of Rs.38,950/-. The explanation put forth by the appellant is only make believe and does not

deserve acceptance.

4. The long delay for the period from 28th June, 2003 until the date of filing of the appeal in the month of October, 2005 is not sufficiently explained.

5. Notice of motion is liable to be dismissed and is dismissed.

(R.M. LODHA, J.)

(ANOOP V. MOHTA, J.)